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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,706	02/25/2004	Paul Swenson	01841-22363.NP	3682
20551 7590 02/03/2009 THORPE NORTH & WESTERN, LLP. P.O. Box 1219 SANDY, UT 84091-1219				
EXAMINER				
FIELDS, BENJAMIN S				
ART UNIT		PAPER NUMBER		
3692				
MAIL DATE		DELIVERY MODE		
02/03/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/786,706

**Applicant(s)**

SWENSON ET AL.

**Examiner**

BENJAMIN S. FIELDS

**Art Unit**

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Introduction*

1. The following is a **NON-FINAL** Office Action in response to the communication received on 12 November 2008. Claims 1-21 are now pending in this application.

### *Response to Amendments*

2. The Examiner acknowledges the applicant's remarks regarding the telephonic interview held 16 October 2008.

3. Applicants Amendments to Claims 1-20 has been acknowledged in that: **Claims 1 and 19 have been newly amended; NO Claims have been canceled; Claim 21 has been newly added;** hence, as such, **Claims 1-21 are pending in this application.**

### *Claim Rejections - 35 USC § 101*

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims **1-18** and **21** are rejected under 35 U.S.C. 101 because the claimed invention is not directed to a secondary statutory subject matter/class.

Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. In this particular case, Claims **1-18** and **21** are not tied to another statutory class, such as any hardware. Thus, it is unclear as to whether or not the claims are mere processes that involve purely human labor.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.: [http://iplaw.bna.com/iplw/5000/split\\_display.adp?fedfid=10988734&vname=ippqcases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0](http://iplaw.bna.com/iplw/5000/split_display.adp?fedfid=10988734&vname=ippqcases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Exhibit U in view of Harmon et al. (US PG Pub. No. 2004/0181468), [hereinafter Harmon].

Evidence of public use and knowledge of the invention prior to Applicant's earliest priority date of 6 February 2004 is provided as follows:

EXHIBIT	DESCRIPTION
U	FREEDOM FIELD <URL: <a href="http://www.bright.net">http://www.bright.net</a> > [online], March 2001 [retrieved on 2005-04-11]. Retrieved from the Internet: <URL: <a href="http://www.archive.org">http://www.archive.org</a> >
V	HEALING FIELD <URL: <a href="http://www.healingfield.org">http://www.healingfield.org</a> > [online], September 2002 [retrieved on 2005-04-11]. Retrieved from the Internet: <URL: <a href="http://www.archive.org">http://www.archive.org</a> >
W	PERPETUAL FUNDRAISING SYSTEM <URL: <a href="http://www.colonialflag.com">http://www.colonialflag.com</a> > [online], May 2001 [retrieved on 2005-04-11]. Retrieved from the Internet: <URL: <a href="http://www.archive.org">http://www.archive.org</a> >

This evidence, taken as a whole, shows that the invention, as claimed, was both in "public use" and "knowledgeable" prior to 6 February 2004.

Referring to Claim 1: Exhibit U teaches a method for raising funds for a charitable cause comprising the steps of: identifying a charitable cause in need of funding (Exhibit U//The need for funding here is represented by assisting troops across the country//); providing a plurality of patriotic flags to comprise a healing field that is, at least in part, expressive of the charitable cause (Exhibit U); linking a display of the healing field to the charitable cause in need of funding by carrying out a public awareness campaign designed to educate others and provide sponsorship of the healing field and at least some of the plurality of patriotic flags prior to their display with at least a portion of proceeds being donated to the charitable cause in need of funding (Exhibit U); displaying the healing field as part of the public awareness campaign, the plurality of patriotic flags being arranged as a group in a layout so as to stimulate an emotional response within individuals viewing the healing field that is associated with the charitable cause (Exhibit U); facilitating the viewing of the healing field and the concurrent providing of information related to the charitable cause to heighten the emotional response; selling at least some of the plurality of patriotic flags that are displayed in the healing field and donating proceeds to the charitable cause in need of funding (Exhibit U).

Exhibit U, however, does not expressly discuss the plurality of patriotic flags temporarily occupying a location not dedicated to providing a permanent display of the patriotic flags; donating *at least a portion of* proceeds to the charitable cause in need of funding; and removing the plurality of patriotic flags to eliminate the healing field from the location.

Harmon, in a similar environment, shows multiple fund raising events (a healing field could be an example of such) temporarily occupying a location (or period of time) not dedicated to providing a permanent display (Harmon: Page 1, Paragraphs 0004-0008); *at least a portion of* proceeds to the charitable cause in need of funding (Harmon: Abstract; See Figures; See Claims). Regarding removing the plurality of patriotic flags to eliminate the healing field from the location, the Examiner notes that this would obviously take place if the healing field even were held at certain times of the year or at certain locations, etc.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method of Exhibit U with the features causing the charity fund raising event to be periodic/temporary and allowing at least a portion of proceeds to go to the charitable cause in need of funding for the purpose of further inhibiting charitable giving and create better manners to solicit funds (Harmon: Page 1, Paragraphs 0002-0008).

Furthermore, the Examiner notes that the methods steps which have been most newly amended represent actions which can not be effectively claimed. In particular, a campaign *designed to educate; flags being arranged so as to stimulate an emotional response; to heighten the emotional response*. Such material is given minimal weight due to the fact that while such actions may be pursued, there is no definitive guarantee that such will occur.

Referring to Claim 2: Exhibit U discloses a method, wherein the step of providing a plurality of patriotic flags to comprise a healing field further comprises the step of

identifying a historical event to be symbolized by the plurality of flags (Exhibit U //The 'historical event' mentioned is the support which will be provided by assisting in this effort//).

Referring to Claim 3: Exhibit U shows a method, wherein the step of displaying the healing field further comprises the step of positioning the plurality of patriotic flags in a predetermined pattern (Exhibits U, V//Exhibit U refers to a predetermined pattern in which patriotic flags can be placed//).

Referring to Claim 4: Exhibit U discloses a method, wherein the predetermined pattern could be that of a geometric nature.

In addition, the Examiner notes applicant's disclosure of the predetermined pattern being that of a geometric pattern/nature, however, the geometric pattern/nature of the pattern (i.e. aesthetics), is found to be nonfunctional descriptive material and does not alter how the method operates. This type of data qualifies as nonfunctional descriptive material since there is no interrelationship between the type of pattern and the method for operating the system. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Referring to Claim 5: Exhibit U teaches a method, wherein the predetermined pattern could be that of a linear array placed along an area selected from the group consisting of a path, a body of water, a river, a building, a structure, a road, a highway, a trail, a hill, a mountain, and a military base.

In addition, the Examiner notes applicant's disclosure of the predetermined pattern being that of a geometric pattern/nature, however, the geometric pattern/nature of the pattern (i.e. aesthetics), is found to be nonfunctional descriptive material and does not alter how the method operates. This type of data qualifies as nonfunctional descriptive material since there is no interrelationship between the type of pattern and the method for operating the system. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Referring to Claim 6: Exhibits U and V each disclose a method further comprising the step of incorporating information within the predetermined pattern.

Referring to Claim 7: Exhibits U and V each show a method, further comprising the step of incorporating a graphic message within the predetermined pattern.

Referring to Claim 8: Exhibits U and V each disclose a method, wherein the step of linking a display of the healing field to the charitable cause further comprises the step of advertising a purpose for the plurality of patriotic flags and the healing field, wherein the purpose links the plurality of patriotic flags and the healing field to the charitable cause (Exhibits U, V//The website disclosed herein serves as a means of advertisement for such a charitable cause//).

Referring to Claim 9: Exhibit U teaches the limitations of Claim 1.

Exhibit U, however, does not expressly discuss a method, wherein the step of advertising the purpose for the plurality of patriotic flags and the healing field further

comprises the step of advertising through a medium selected from the group consisting of radio stations, television stations, newspapers, magazines.

The Examiner notes that advertising via the means selected from the group consisting of radio stations, television stations, newspapers, magazines are common, old, and well known in the art. Therefore, it would be obvious to utilize, in addition to the present website, additional avenues of promoting (i.e. radio stations, television stations, newspapers, magazines) the patriotic healing field fundraising event.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method and system of Exhibit U for a patriotic flag healing field fundraising event with an even greater ability to promote this fundraising event via radio stations, television stations, newspapers, and/or magazines for the purpose of enabling a vast majority of people to support such a charitable cause (Exhibit U).

Referring to Claim 10: Exhibits U and V each disclose a method further comprising the step of obtaining one or more sponsors to pay for the plurality of patriotic flags in the healing field (Exhibits U, V//Requests are made via the site for sponsors to 'pledge' some sort of fundraising for the goods/services rendered//).

Referring to Claim 11: Exhibits U and V each show a method, wherein the one or more sponsors comprises a person that pays to sponsor one or more flags in the plurality of patriotic flags (Exhibits U, V//The sites allow an individual, company, and/or organization to sponsor the fundraising event//).

Referring to Claim 12: Claim 12 parallels the limitations of Claim 11. As such, Claim 12 is rejected under the same basis as is Claim 11 as mentioned supra.

Referring to Claim 13: Exhibits U and V each teach a method, wherein the step of selling the plurality of patriotic flags further comprises the step of selling the plurality of patriotic flags through an auction (Exhibit U//The site composes an auction type feature/functionality which allows sponsorship of the fundraising event//).

Referring to Claim 14: Exhibits U and V each disclose a method, wherein the auction is an internet auction (Exhibits U, V//These sites are both accessible via the internet//).

Referring to Claim 15: Exhibit U shows a method, wherein the step of selling the plurality of patriotic flags further comprises the step of selling the plurality of patriotic flags through an advertising campaign (Exhibit U//The site is an advertising campaign//).

Referring to Claim 16: Exhibits U and V each disclose a method, wherein the step of selling the plurality of patriotic flags further comprises the step of placing advertisements near the healing field (Exhibits U, V//Use of the sites are the main avenue for sales for the fundraising campaign, however, additional sponsor near the healing field assist in helping to accomplish the fundraising goal//).

Referring to Claim 17: Claim 17 reflects the limitations of Claim 9. As such, Claim 17 is rejected under the same basis as is Claim 9 as mentioned supra.

Referring to Claim 18: Claim 18 parallels the limitations of Claim 9. As such, Claim 18 is rejected under the same basis as is Claim 9 as mentioned supra.

Referring to Claim 19: Claim 19 is the system for the method of Claim 1. As such, Claim 19 is rejected under the same basis as is Claim 1 as mentioned supra.

Referring to Claim 20: Claim 20 reflects the limitations of Claim 1. As such, Claim 20 is rejected under the same basis as is Claim 1 as mentioned supra.

Referring to Claim 21: Claim 21 parallels the limitations of Claim 1. As such, Claim 21 is rejected under the same basis as is Claim 1 as mentioned supra.

### ***Response to Arguments***

8. Applicants arguments filed 12 November 2008 have been fully considered but have been found to be **moot** and **non-persuasive**. The Applicants argue:

#### **Argument**

#### **Claim Rejection -- 35 U.S.C. 103(a)**

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Exhibit U in view of United States Publication No. 2004/0181468 to Harmon et al. Applicant appreciates the concerns raised by the Examiner, but respectfully submits that in light of the arguments presented below, neither Exhibit U nor Harmon, either individually or collectively, render the claims of the present invention obvious. With respect to independent claims 1 and 19, applicant submits that the combination of Exhibit U and Harmon does not teach or suggest a method or system for raising funds for a charitable cause as recited in these claims. Specifically, the combination of Exhibit U and Harmon does not teach or suggest a healing field comprised of a plurality of flags that is, at least in part, expressive of the charitable cause. In other words, the healing field may provide some type of visible outward expression of the charitable cause. For example, this may be in the type of flags used, the particular arrangement or pattern in which the flags are positioned, etc. On the other hand, Exhibit U teaches and suggests a permanent location as argued in the previous response. See Applicants Amendment and Response mailed June 23, 2008. Although Exhibit U indicates that there is a display of flags, there is nothing further to teach or suggest that these flags make up a healing field that is, at least in part, expressive of the charitable cause, which in this case is assisting troops across the country as indicated by the Examiner. And, a combination of Exhibit U with Harmon fails to make up for this deficiency as Harmon does not teach or suggest this element. Rather, Harmon teaches an electronic system and method for selling items, where part of the proceeds of the sale of such items are provided to an identified charity. The system and method in Harmon are more akin to an online store. Upon review of Harmon, it is clearly taught therein that

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the display of items is merely accomplished electronically on a computer with transactions taking place in an electronic marketplace, much like any prior art online store. See Harmon, pg. 2, paragraph 0024 which states, "... The system 10 includes a number of buyer/seller computers 12 and at least one exchange computer 14. The buyer/seller computers 12 are the computers of individual participants in an electronic marketplace established by the system 10." Harmon further states that "the function of funding a charity or a group of charities is ancillary to the primary function of trading items in system 10." See Harmon, pg. 2, par. 0026. Moreover, the "items" taught by Harmon are various consumer goods that are preferably "high in demand," such as sporting or concert tickets, in order to facilitate the goal of reselling the items at a higher price, which is the focus of the teachings in Harmon, and which is the intended function of the system and method therein. See Harmon, pg. 3, par. 0030. Indeed, the items may comprise various items that can command a price, which items are simply displayed over a computer network for the purpose of allowing users of the system to buy, resale and trade such items. As such, there is nothing even remotely suggested about these "items" or the way they are electronically displayed being expressive of the identified charity. As indicated above, the function of funding a charity is ancillary. Based on this, applicant submits that Harmon does not make up for the deficiency of Exhibit U, and that the combination of Exhibit U and Harmon do not teach the elements of independent claims 1 and 19. The combination of Exhibit U and Harmon also does not teach or suggest linking a display of the healing field to the charitable cause, which linking is carried out using a public awareness campaign designed to educate others and provide sponsorship of the healing field and at least some of the plurality of patriotic flags prior to their display with at least a portion of proceeds being donated to the charitable cause in need of funding. Rather, Exhibit U teaches a permanent memorial where individuals can purchase bricks in support of the troops. However, there is nothing to suggest that prior to the display of the bricks or the flags, a public campaign is initiated to obtain sponsors of individual flags that are specifically intended for use in a temporary healing field. The reference to Harmon is silent on a public campaign and sponsorship scenarios. As such, the combination of Exhibit U and Harmon fail to teach this element of the claims. The combination of Exhibit U and Harmon also does not teach or suggest displaying the healing field as part of the public awareness campaign, the plurality of patriotic flags being arranged as a group in a layout so as to stimulate an emotional response within individuals viewing the healing field, which emotional response is associated with the charitable cause. Again, Exhibit U simply teaches a display of flags (much like any display of flags), but does not teach that the display is to be specifically arranged so as to stimulate an emotional response associated with the charitable cause. Harmon does not make up for this deficiency as Harmon merely displays various consumer goods within an electronic marketplace as discussed above. Dependent claims 2-18 and 20 place further limitations on independent claims 1 and 19, which are argued above as being allowable. As such, applicant submits that these claims also stand in a condition for allowance. Based on the foregoing, Applicant submits that the prior art does not render the claims of the present invention obvious. As such, Applicant respectfully requests that the claims of the application be reconsidered and that the rejection under 35 U.S.C. § 103 be withdrawn.

### Regarding Argument

The Examiner respectfully disagrees. As stated by Applicants, the healing field *may* provide some type of visible outward expression of the charitable cause. For example, this may be in the type of flags used, the particular arrangement or pattern in which the flags are positioned, etc. The Applicants go on to further mention that Harmon further states that "the function of funding a charity or a group of charities is ancillary to the primary function of trading items ..." Therefore, Harmon does teach and suggest the funding of a charity or a group of charities. As such, the Examiner submits that Harmon in combination with the Exhibits disclosed supra show the elements of the instant application.

Furthermore, the Examiner notes that the methods steps which have been most newly amended represent actions which can not be effectively claimed. In particular, a campaign *designed to educate; flags being arranged so as to stimulate an emotional response; to heighten the emotional response*. Such material is given minimal weight due to the fact that while such actions may be pursued, there is no definitive guarantee that such will occur.

As such, the Examiner maintains the rejection.

9. The arguments as filed 12 November 2008 have been fully considered but have been found to be **moot** and **non-persuasive**. As the remaining claims depend directly or indirectly from the independent claims mentioned/discusses above, the Examiner maintains all previously asserted rejections.

### **Examiner Note**

10. **The Examiner has pointed out particular reference(s) contained in the prior art of record within the body of this action for convenience of the Applicant.** Although

the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. **Applicant**, in preparing the response, should **fully consider the entire reference** as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lawrence et al. (US PG Pub. No. 2002/0116215) teach a method and system for administering an on-line fund-raising event.

Abramson (US PG Pub. No. 2003/0195766) discusses a method of fundraising for a charitable cause.

Any inquiry concerning this communication should be directed to BENJAMIN S. FIELDS at telephone number 571.272.9734. The examiner can normally be reached MONDAY THRU FRI between the hours of 9AM and 7PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KAMBIZ ABDI can be reached at 571.272.6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin S. Fields

24 January 2009

/Harish T Dass/

Primary Examiner, Art Unit 3692

1/30/2009